

Award No. 8810
Docket No. CL-8309

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE NORTHERN PACIFIC TERMINAL COMPANY OF OREGON

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that

(1) The Agreement governing the hours of service and working conditions between the parties was violated by the Carrier in the treatment accorded Mr. H. S. Fisher, when it removed him from his regularly assigned position of Chief Clerk to the General Yardmaster without just cause.

(2) Mr. H. S. Fisher shall now be restored to his regular assigned position and compensated for the difference between what he earned on the Car Distributor Position, rate of pay \$15.92 per day, and what he would have earned on his regular position of Chief Clerk, rate of pay \$16.42 per day, since August 5, 1954 and up until such time as the violation is corrected.

OPINION OF BOARD: Disposition of the claim herein and that in Docket CL-8310, a companion case will depend largely upon the application of our recent Award 8431, which involved the same parties, the same rule and the same property, except that in that award Claimant was disciplined for violation of Rule G, whereas in these two companion cases Claimants were charged with "incompetency, unsatisfactory service, and/or neglect with reference thereto."

Hearings were held in the usual course, consistent with the procedure that had been followed on this property for over 30 years, and Claimants were found guilty as charged and demoted in the manner complained of.

The principal contention of the Organization here, as it was in Docket CL-8864 (Award 8431 spura) was the denial of Claimant's right to appeal to "the next highest officer."

It might be well to quote the decisive language of Award 8431:

“* * * (8) But the Organization's contention of denial of Claimant's right of appeal to 'the next higher officer' must be upheld. It does not avail to argue that thirty years of uncontested past practice and several cases of self-reversal on appeal permits Rule 22(c) to be interpreted so that the highest official of the Carrier on labor grievances can make the original decisions and then pass judgment on appeal therefrom. The plain meaning of the language of Rule 22(c), as well as the intent of the Railway Labor Act, is that in a case like this a first decision on a claim or grievance by a lower Carrier representative or official may be appealed to one or more higher, different officers, including the top or final decision-maker. Accordingly, in this respect (and in this respect only) the Carrier's behavior in this case must be judged to have been arbitrary and unreasonable.

“Were it not for the defect found in (8) just above, the instant claim would be denied. As it is, the claim must be sustained. But not in its entirety. Except in respect to required appeal, Claimant was correctly found guilty of proper charges at a proper hearing. He is to be reinstated with seniority rights unimpaired, but he shall not be compensated for any time or wages lost.”

In the instant case the original decision was made by Manager Jones who was also “the highest official designated to handle such matters * * *”

Therefore, in further effort to establish compliance with the rules on this property we hold that the carrier did violate the agreement in respect to Claimant's right to appeal.

While not necessary to the decision here it should be pointed out that it was not improper to have Trainmaster Lord conduct the investigation, although he was not Claimant's immediate supervising officer, who was General Yardmaster Soder. Lord was the next highest supervising officer, and Soder with due propriety deferred from acting because it appears in the record that he was present at a “Company witness”, so it was only natural that the next highest supervising officer Mr. Lord should conduct the hearing. In passing it is interesting to note that when Mr. Lord asked the Organization's Chairman if the investigation had been conducted in a fair and impartial manner the Chairman replied:

“As you always do, Mr. Lord, in a fair and impartial manner.”

In commenting on Award 8431, the Labor Member of the Board states:

“Although we recognized in the case covered by Award 8431, **that which we do not concede here**, * * * that ‘The degree of discipline imposed was reasonably related to the seriousness of the proven offense and to Claimant's past record’, * * *”

Conceded or not the record shows that the same reasonable relationship was present here. Everyone concerned admits the importance of the expeditious handling of the switching settlements involved, and Claimant himself when asked the question “By your actions, Mr. Fisher, do you think that you fulfilled the requirements of your assignment as Chief Clerk?” answered “Well, not perhaps as well as it should have been.”

Employees contend that the reason Claimant fell behind in his work in connection with the switching settlements was because of all the confusion in his office due to the installation of I. B. M. Machines, but the record shows that his official duties were not added to because of that. The Carrier had appointed a Special Assistant Manager to take care of the installation and supervision of those machines, and whatever Claimant did in respect thereto was voluntary. His first obligation was to his own assignment.

There is some dispute as to actually how many of these switching settlements were delinquent (how easy it would have been for someone to count them) but there were 14 at least during a two week period because when another employe was put on the job he got out that many on the one night that he worked Claimant's position. Therefore, it would seem that with just a little more effort, the switching settlements could have been current.

In a letter written to General Chairman McKittrick, Mr. Jones, Company Manager stated inter alia:

"Several years ago, you yourself made bitter and serious complaints * * * against Mr. Fisher. * * * It is our understanding he was planning to vacate the job himself, * * *. Furthermore, in conversation with us, he seems considerably relieved that he no longer carries the responsibilities of his former position and appears happy on his new job."

* * * * *

"* * * The Employees admit that complaints were made against certain policies instituted by the Carrier through the office of the Chief Clerk, but deny that any complaint was ever registered that Claimant's work was unsatisfactory."

We shall not attempt to reconcile this conflict. The record supports the decision made on the charges against Claimant.

This referee might well have reached a different conclusion, (See Award 8297) were it not for his desire to avoid further confusion on the property by disagreeing with Award 8431, and since that Award and our conclusion here imposes no burden on the Carrier, he is agreeable to the conclusion reached in that Award.

We agree too, with the conclusion in Award 8431 Claimant

"shall not be compensated for any time or wages lost."

We conclude that while the Carrier violated the agreement, and Claimant should be restored to his regular assigned position with seniority rights unimpaired but his claim for compensation is denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement as indicated in Opinion.

AWARD

Claim sustained as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 22nd day of April, 1959.